



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 20, 1998

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR98-0508

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113307.

The Texas Department of Public Safety (the "department") received requests for information relating to a complaint against a department employee. You inform us that you have released two of the requestors' statements to them. You contend that the remaining requested information is excepted from public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

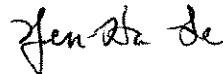
You have submitted information to this office showing that the requestor has filed a complaint with the Texas Commission on Human Rights (the "TCHR") alleging discrimination and retaliation. The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to the TCHR over complaints alleging employment discrimination. *Id.*

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. By showing that the complaint filed with the TCHR is pending, you have shown that litigation is reasonably anticipated. Our review of the records at issue also shows that they are related to the anticipated litigation for purposes of section 552.103(a). Thus, you may withhold the remaining requested information pursuant to section 552.103(a).

We note that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 113307

Enclosures: Submitted documents

cc: Ms. Jonita Roberts  
Records Technician III  
DPAS Motor Carrier Bureau  
P.O. Box 4087  
Austin, Texas 78773  
(w/o enclosures)

Ms. Betty Dearing  
Texas Department of Public Safety  
Motor Carrier Bureau  
P.O. Box 4087  
Austin, Texas 78773-0001  
(w/o enclosures)

Ms. Dee Jordan  
Assistant Supervisor, MCCA  
Texas Department of Public Safety  
Motor Carrier Bureau  
P.O. Box 4087  
Austin, Texas 78773-0001  
(w/o enclosures)